

SAMUEL R. PHILLIPS, AUGUST 30, 2005

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| <p style="text-align: right;">Page 101</p> <p>1 SAMUEL R. PHILLIPS,<br/>2 called as a witness herein, having been previously<br/>3 duly sworn and having testified, was examined and<br/>4 testified further as follows:<br/>5 EXAMINATION (RESUMED)<br/>6 BY MS. WENDLANDT:<br/>7 Q. Welcome back.<br/>8 A. Thank you.<br/>9 Q. Mr. Phillips, I'm asking you to turn<br/>10 your attention to Exhibit 4, tab 10, the Maatz<br/>11 patent, U.S. Patent No. 3,500,840.<br/>12 What is the cradle structure adapted to<br/>13 receive the shaving head of the shaving apparatus<br/>14 in the Maatz patent?<br/>15 A. It's got -- it's got a rack with some<br/>16 holes in it. It has a row of magnets and it has a<br/>17 grid or perforated shelf. All of those serve as a<br/>18 structure to receive shaving apparatus.<br/>19 Q. Are you referring to the numbers 17, 16<br/>20 and 15 in figure 2?<br/>21 A. Yes. Yes.<br/>22 Q. What is the shaving apparatus that rack<br/>23 10 is adapted to receive? Rack 15. I'm sorry.<br/>24 A. Unlike some of the previous --</p> | <p style="text-align: right;">Page 103</p> <p>1 Does the drain dry the barber tools?<br/>2 A. It aids the drying. The tools dry<br/>3 naturally in air, but without the drain they<br/>4 wouldn't dry at all.<br/>5 Q. What is the bracket for insertion of the<br/>6 hair clipper apparatus in the Maatz patent?<br/>7 A. The rack -- well, 15 is -- there is<br/>8 nothing that identifies the racks specifically. 15<br/>9 comes the closest. It's pointing to a hole in the<br/>10 rack. That would be the bracket.<br/>11 Q. The actual hole that the number 15 is<br/>12 pointing to?<br/>13 A. Well, 15 is pointing to a hole. There<br/>14 is nothing pointing to the rack as a -- as a whole,<br/>15 w-h-o-l-e. But the piece of metal that the hole is<br/>16 in, that hole 15 is in, that's the rack. Would be<br/>17 some different hole, one that was aligned with a<br/>18 magnet would be the bracket.<br/>19 Q. Can you explain that, what hole aligned<br/>20 with the magnet?<br/>21 A. Well, you would -- there would be a<br/>22 hole -- a hole aligned -- the picture here shows<br/>23 the magnets kind of spaced without relation to the<br/>24 holes in the rack above them, but if you</p> |
| <p style="text-align: right;">Page 102</p> <p>1 previous -- the prior art we discussed previously,<br/>2 it doesn't show any pictures of the tools being in<br/>3 there, but scissors, razors, combs, all kinds of<br/>4 barber tools.<br/>5 Q. Are razors a shaving apparatus?<br/>6 A. No.<br/>7 Q. Combs?<br/>8 A. No.<br/>9 Q. But razors are?<br/>10 A. Razors are.<br/>11 Q. And is rack 15 adapted to receive the<br/>12 shaving head of a clipper, hair clippers?<br/>13 A. Maatz does not name clippers<br/>14 specifically. The provisions, though, for<br/>15 accepting them are the same as in some of the<br/>16 patents we've discussed previously, namely, racks<br/>17 and magnets. So, yes, it is adapted to holding the<br/>18 heads of clippers.<br/>19 Q. So, to hold the heads of a clipper you<br/>20 would use magnet 16 and rack 15 together?<br/>21 A. Certainly magnet 16. I think more<br/>22 likely magnet 16 and the perforated tray 17<br/>23 together.<br/>24 Q. The Maatz patent discloses a drain.</p>   | <p style="text-align: right;">Page 104</p> <p>1 specifically wanted to -- let me rephrase this.<br/>2 Depending upon the shape of the shaver<br/>3 head, you either would need a bracket or not and if<br/>4 you needed one, the rack in which hole 15 is put<br/>5 would be it.<br/>6 Q. So, it's your understanding of the Maatz<br/>7 patent that the rack in which hole 15 exists is a<br/>8 bracket for insertion of, for example, the hair<br/>9 clipper apparatus?<br/>10 A. Well, for shaving apparatus.<br/>11 Q. So, in your one example, one of the<br/>12 shaving apparatuses was a hair clipper?<br/>13 A. Yes, or a straight razor.<br/>14 Q. Okay. Let's stick with the hair<br/>15 clipper. What is the bracket for insertion of the<br/>16 hair clipper apparatus in the Maatz patent?<br/>17 A. It would be one of the holes in rack 15.<br/>18 Q. And that would be the same with regard<br/>19 to a straight razor?<br/>20 A. Yes, probably be a different hole.<br/>21 Q. Because?<br/>22 A. Because they are different shapes or<br/>23 sizes.<br/>24 Q. Is there in your opinion any difference</p>  |

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1 between cleaning something and sterilizing it?  
 2 A. There is certainly some difference.  
 3 Q. What is that difference?  
 4 A. But it's clear that sterilizing is a  
 5 form of cleaning.  
 6 Q. So, in the Teknek case concerning the  
 7 cleaning machine for sheet, sheets?  
 8 A. Sheets.  
 9 Q. Was that a sterilizing machine?  
 10 A. No.  
 11 Q. And why -- what is the distinction then?  
 12 Are you saying sterilizing is a subset of cleaning?  
 13 A. Yes, I do.  
 14 Q. Okay. And what distinguishes a  
 15 sterilizing process from a cleaning process?  
 16 A. Well, a sterilizing process bears the  
 17 additional burden of killing any germs that are  
 18 there but there is a lesser burden on removing  
 19 particles. So you have a concept of clean dirt,  
 20 which is exactly what you have in an operating  
 21 room.  
 22 Q. You have clean dirt in an operating  
 23 room?  
 24 A. Yes.

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1 Q. Why do you say that?  
 2 A. Well, semiconductor clean rooms are  
 3 where people really know how to clean and they are  
 4 a lot more rigorously enforced than anything I have  
 5 seen in a hospital. Their shoes, beard, hair nets,  
 6 all those things are not well taken care of in an  
 7 operating room.  
 8 Q. So, an operating room is a sterile  
 9 environment or sterilized environment but not  
 10 necessarily clean?  
 11 A. That's right. Now, sterilizing with a  
 12 wet sterilant is intrinsically a cleaning process.  
 13 Q. Why do you say that?  
 14 A. You are washing. Physical removal of  
 15 dirt unavoidably.  
 16 Q. And how is the dirt removed when  
 17 something is sterilized with a wet liquid?  
 18 A. With washing it specifically. And in  
 19 fact some of the prior art, there is sterilization  
 20 with spraying on from a spray can.  
 21 Q. Right. Let's turn to that. I think  
 22 it's the Loeffler patent. Let me see what it is.  
 23 It's tab 6 to Exhibit 4. U.S. Patent 2,976,552.  
 24 Can you explain to me -- is this what

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1 you were referring to?  
 2 A. Yes.  
 3 Q. Can you explain to me how this is a  
 4 cleaning as well as sterilizing process?  
 5 A. Yes. The spraying process is a washing  
 6 process. I'm familiar with its use for cleaning  
 7 things.  
 8 Q. And how does the spray in the Loeffler  
 9 patent physically remove the dirt or particles?  
 10 A. By dissolving some of the material and  
 11 by impingement on the rest -- on other material.  
 12 Q. What do you mean by "dissolving some of  
 13 the material"?  
 14 A. Well, depends what's in the -- in the  
 15 sterilant, but conceivably there are solvents in  
 16 there. It's perhaps alcohol-based. We don't  
 17 really know. It just says sterilant or sterilizing  
 18 liquid is probably what it says.  
 19 Q. I believe at column 2, line 52 or 53 it  
 20 says, "Spraying can 60, containing the sterilizing  
 21 fluid."  
 22 A. Yes. It also -- it also says -- no, I  
 23 think your reference number is right.  
 24 Q. And from that reference, you believe

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1 that conceivably it could contain solvents?  
 2 A. Yes.  
 3 Q. Spray can 60?  
 4 A. Yes.  
 5 Q. Is that something about which you are  
 6 confident?  
 7 A. It mentions -- it mentions in column 1,  
 8 line 43 that the head of a clipper is cleansed in  
 9 the device. It mentions cleansing again at line  
 10 59. There may be other places.  
 11 Q. Sticking with that first reference, the  
 12 line is, "It is, in view of this, the further  
 13 object of the invention to provide means for  
 14 automatically applying a suitable sterilizing fluid  
 15 to the head of the clipper each time it is cleansed  
 16 in that device."  
 17 You read that to be that the sterilizing  
 18 fluid is doing the cleansing, or do you?  
 19 A. It's assisting with the cleansing. I  
 20 realize this device has a brush as an important  
 21 part of it.  
 22 Q. What is the function of the brush?  
 23 A. The brush is to agitate the surface and  
 24 cooperating with the liquid does the cleaning. Not

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| <p style="text-align: right;">Page 109</p> <p>1 just the dry brushing. It's a wet brushing, which<br/>2 is more thorough.<br/>3 Q. And so the brushes are carrying away<br/>4 some of these dirt particles?<br/>5 A. Yes, presumably they are falling on the<br/>6 floor of the device.<br/>7 Q. You also said in answer to my previous<br/>8 question that one of the ways the spray can is<br/>9 washing is that it impinges the rest of the<br/>10 material. You said it dissolves some and then it<br/>11 impinges on the other. What does that mean,<br/>12 impinging?<br/>13 A. Well, impacts. It's got a connotation<br/>14 of velocity in it. There is relative motion, which<br/>15 can dislodge small particles, perhaps those that<br/>16 the brush misses.<br/>17 Q. Do you know whether spray can 60<br/>18 includes solvents?<br/>19 A. No, I don't. I -- since probably the<br/>20 cheapest sterilizing fluid you could use would be<br/>21 alcohol of the various kinds, it's likely to be<br/>22 alcohol and the alcohols are solvents. So, there<br/>23 would be a combination of cleaning and sterilizing.<br/>24 Q. In this Loeffler patent, what is the</p> | <p style="text-align: right;">Page 111</p> <p>1 components that you just now named that are the<br/>2 feed device of the Loeffler patent?<br/>3 A. Well, the valve is a fluid feed device,<br/>4 but there are others. I'm not sure what your<br/>5 question is.<br/>6 Q. I guess my question is: Is it the valve<br/>7 alone that is the fluid feed device or is it the<br/>8 valve in conjunction with these three other<br/>9 elements, the compressed gas, the dip tube and the<br/>10 nozzle?<br/>11 A. It's in conjunction with the three other<br/>12 objects. Each of them is a fluid feed device.<br/>13 Collectively they are the fluid feed device.<br/>14 Q. What do you mean, "each is a fluid feed<br/>15 device"?<br/>16 A. Well, a component of a system is a part<br/>17 of a system.<br/>18 Q. But a component of a system isn't the<br/>19 system?<br/>20 A. I just said that. That's correct.<br/>21 Q. Okay. But you said that valve 75 is a<br/>22 fluid feed device?<br/>23 A. It's a.<br/>24 Q. Yes. It's a component of the fluid feed</p>  |
| <p style="text-align: right;">Page 110</p> <p>1 feed device for feeding cleaning fluid from spray<br/>2 can 60 to the cradle structure?<br/>3 A. The spray can has -- is charged at the<br/>4 factory with compressed gas and -- which you of<br/>5 course cannot see in the picture, but it's there.<br/>6 And there is a dip tube in the can and then a valve<br/>7 at the top of the can and then a spray nozzle which<br/>8 is visible. That's Item 76. And that combination<br/>9 is the feed device.<br/>10 So it's got four elements: The<br/>11 pressurized gas, the dip tube, the valve and the<br/>12 spray nozzle.<br/>13 Q. I'm sorry. The dipped?<br/>14 A. The dip tube.<br/>15 Q. Dip tube. Okay.<br/>16 A. It's not shown there, but that's the<br/>17 only way you can get liquid out of a spray can.<br/>18 Q. Asking you to turn your attention to<br/>19 Exhibit 3, your third report, paragraph 134.<br/>20 A. Yes.<br/>21 Q. You state, "The valve 75 is a fluid feed<br/>22 device"?<br/>23 A. Yes.<br/>24 Q. Is it the valve alone or the four</p>   | <p style="text-align: right;">Page 112</p> <p>1 device?<br/>2 A. Yes. That would be more complete.<br/>3 Q. In paragraph 135 on the next page, you<br/>4 conclude, "I continue to believe that the fluid<br/>5 level in the spray can will always be below the<br/>6 cradle structure during feeding."<br/>7 Can you explain that statement or what's<br/>8 the basis of your belief there?<br/>9 A. Upon -- the complete accuracy of that<br/>10 statement depends upon where the liquid level is in<br/>11 the can at the start, and I do not know the<br/>12 proportion of gas and liquid in the can. I don't<br/>13 know how full it is filled at the factory.<br/>14 Depending on the level that is filled,<br/>15 though, there is a level at which the -- with the<br/>16 geometric arrangement shown in the picture, the<br/>17 level of the liquid will be below and remain below<br/>18 the head of the clipper.<br/>19 Q. Going down to paragraph 138.<br/>20 A. Yes.<br/>21 Q. At page 39 you state, "The hair clipper<br/>22 in the Loeffler patent obviously has a center of<br/>23 gravity."<br/>24 A. Yes.</p> |

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1 Q. Have you calculated where the center of  
2 gravity would be --  
3 A. No.  
4 Q. -- in the Loeffler patent?  
5 A. No.  
6 Q. Turning your attention to Exhibit 6,  
7 which is Exhibits 38, 39, 40 and 41 to your  
8 reports.  
9 A. Thank you.  
10 Q. At Exhibit 40.  
11 A. Yes.  
12 Q. You have Mnller patent.  
13 A. Yes.  
14 Q. U.S. Patent 4,154,003.  
15 A. Yes.  
16 Q. I couldn't find the Mnller patent cited  
17 in your report, but I was wondering why it was  
18 included as an exhibit?  
19 A. It is cited but it's hard to find.  
20 Q. Okay.  
21 A. It is on page 41.  
22 Q. Of the third report?  
23 A. In the footnote. Yeah.  
24 Q. What is the proposition for which you

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1 owns its patents. So it's not very surprising.  
2 And what they have got is an impeller in  
3 there. It's -- the proposition is to augment the  
4 Salas information or the Salas prior art.  
5 Q. Okay. Mr. Phillips, do you dispute that  
6 each of the Rayovac cleaning systems that are  
7 accused of infringement in this patent litigation  
8 each include a cleaning fluid container?  
9 A. I don't dispute that.  
10 Q. And do you dispute that each of them  
11 include a structure that's arranged above the fluid  
12 level of the cleaning fluid in the container?  
13 A. I don't dispute that.  
14 Q. Do you dispute that each of them contain  
15 a drying device?  
16 A. They each contain a drying device.  
17 Q. Turning your attention to Exhibit 2,  
18 your second report.  
19 A. Yes.  
20 Q. At paragraph 79 of your report, you  
21 begin to describe what you refer to as acceptable  
22 non-infringing substitutes?  
23 A. Yes.  
24 Q. The first such substitute is a -- either,

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1 are citing this patent for?  
2 A. That one can combine washing and drying  
3 in the same -- in the same device. They don't have  
4 to be separated.  
5 Q. What is the connection between that and  
6 this case?  
7 A. It's -- it's rebutting what some of  
8 Dr. -- what -- some of what Dr. Nayfeh says where  
9 he is talking about the -- that it's bad to have  
10 the cleaning fluid introduced into the drying  
11 device.  
12 Q. I see. And with regard to Exhibit 6,  
13 tab 41, which I believe is a Japanese abstract,  
14 patent abstract?  
15 A. Yeah.  
16 Q. And it may include the patent itself  
17 also. What is the proposition for which you are  
18 citing this patent?  
19 A. I don't recall right now.  
20 Well, at the bottom of page 44 in  
21 footnote 14 there is -- I think I mentioned earlier  
22 that there were such things as electric wet razors,  
23 and I knew that Panasonic is a leading maker of  
24 those and Panasonic is a brand of Matsushita who

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1 one or two gas cleaning systems that Rayovac is  
2 currently developing?  
3 A. Yes.  
4 Q. What is the basis for your opinion that  
5 that gas cleaning system is a non-infringing  
6 substitute, an available non-infringing substitute?  
7 A. I understand that available means that  
8 it could be placed on the market in some short time  
9 without defining what short means. It doesn't mean  
10 that you can go and buy one today. But it means  
11 that Rayovac could manage its business so that you  
12 could go and buy one before too long, whatever "too  
13 long" means.  
14 Q. To conclude that Rayovac could place  
15 such a gas cleaning system on the market in a short  
16 time, whatever that time is, to whom did you speak?  
17 A. Mr. Chasen.  
18 Q. Anyone else?  
19 A. No. Well, I spoke to Mr. Shimota.  
20 Q. Anyone else at Rayovac?  
21 A. No one else at Rayovac.  
22 Q. And did you review any documents in  
23 connection with your opinion that the gas cleaning  
24 system is an available non-infringing substitute?

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| <p style="text-align: right;">Page 117</p> <p>1 A. Yes, I did.</p> <p>2 Q. Placing before you what I have marked as</p> <p>3 Phillips Exhibit 8, which is tab 37 to your report.</p> <p>4 Are those the documents that you reviewed in</p> <p>5 connection with forming your opinion?</p> <p>6 A. Yes, they are.</p> <p>7 Q. Did you review any other documents?</p> <p>8 A. I recall there were some -- some kind of</p> <p>9 test reports, some kind of written documents</p> <p>10 conditioned with these pictures, but I don't now</p> <p>11 see them. They were not very formal test reports,</p> <p>12 but I don't know where they are.</p> <p>13 Q. Well, the last two pages of the tab 37</p> <p>14 is a document entitled "Carbon Dioxide Rotary</p> <p>15 Shaver Cleaner Operating Instructions."</p> <p>16 Is that what you are referring to?</p> <p>17 A. I think there is more than that. But I</p> <p>18 don't see it here and I know that Mr. Shimota</p> <p>19 turned over to you everything that we had. So,</p> <p>20 maybe my memory is wrong.</p> <p>21 Q. Well, if you did see such test reports,</p> <p>22 do you still have a copy of them?</p> <p>23 A. Presumably I do. But everything I have</p> <p>24 like this I got from Mr. Shimota in the first</p> | <p style="text-align: right;">Page 119</p> <p>1 out.</p> <p>2 What he told me was he was developing a</p> <p>3 completely dry system and, as you know, in the art</p> <p>4 there are -- there are blower and vacuum systems</p> <p>5 designed to clean razors. His concept -- but all</p> <p>6 of them to date that I have -- that I know anything</p> <p>7 about involve a fan or blower or some</p> <p>8 electric-powered motive device.</p> <p>9 And his concept was to use compressed</p> <p>10 gas and while it could be done with an air</p> <p>11 compressor -- well, he mentions it here I see.</p> <p>12 He's got two kinds. One of them uses a</p> <p>13 miniature compressor and the other one uses CO2</p> <p>14 cylinders of the small kind, usually called</p> <p>15 Sparklets cylinders. That is a trade name. It's</p> <p>16 "Spark" and then I-e-t-t-s, two Ts.</p> <p>17 Such cartridges have been adapted for,</p> <p>18 oh, pellet guns, starting small engines, all kinds</p> <p>19 of things, and are available in the market.</p> <p>20 Q. Have you seen Mr. -- either of</p> <p>21 Mr. Chasen's gas cleaning systems?</p> <p>22 A. No, only photographs and discussion with</p> <p>23 him on the phone while looking at the photographs.</p> <p>24 Q. Do the photographs tell you that it</p> |
| <p style="text-align: right;">Page 118</p> <p>1 place. So, it's --</p> <p>2 Q. It could just be that it was missing</p> <p>3 from the actual document we reviewed at Ropes &amp;</p> <p>4 Gray?</p> <p>5 A. Or it could be that I'm wrong. I just</p> <p>6 don't know which is which. I thought there were</p> <p>7 some documents that kind of look like this</p> <p>8 instruction but that they were more -- more</p> <p>9 test-oriented.</p> <p>10 Not trying to hold anything out on you</p> <p>11 here.</p> <p>12 Q. I just want to make sure we have</p> <p>13 everything.</p> <p>14 A. Right. We have what we have.</p> <p>15 MS. WENDLANDT: Jim, to the extent there are</p> <p>16 such test reports, if you could produce them, that</p> <p>17 will be great.</p> <p>18 MR. SHIMOTA: Sure. If there is anything we</p> <p>19 haven't produced, I will.</p> <p>20 BY MS. WENDLANDT: .</p> <p>21 Q. What did Mr. Chasen tell you about the</p> <p>22 gas cleaning system that he was developing?</p> <p>23 A. Let me get my report in front of me here</p> <p>24 just to refresh my memory so I don't leave anything</p>  | <p style="text-align: right;">Page 120</p> <p>1 could be an effective cleaning system?</p> <p>2 A. Yes.</p> <p>3 Q. How do they show that?</p> <p>4 A. They showed some before and after</p> <p>5 pictures. Again, that's either him stepping</p> <p>6 through them with me on the phone -- well, you see,</p> <p>7 he has numbered the tests and there is a</p> <p>8 progression of development and as it proceeds</p> <p>9 through this progression, the after photographs get</p> <p>10 cleaner and cleaner.</p> <p>11 And I think he has some comparisons that</p> <p>12 I am not sure I can show them to you here. I think</p> <p>13 he has some comparisons that show after -- after</p> <p>14 wet cleaning to establish a benchmark. So, he's</p> <p>15 satisfied that the thing is doing a good job of</p> <p>16 cleaning.</p> <p>17 Q. What is the status of Mr. Chasen's gas</p> <p>18 cleaning system today?</p> <p>19 A. As far as I know it is ready to be</p> <p>20 turned into a product. Still a laboratory unit as</p> <p>21 far as I know, but the -- the heavy-duty</p> <p>22 engineering is done.</p> <p>23 Q. And these are -- that conclusion is</p> <p>24 based on your discussions with Mr. Chasen?</p>   |

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1 A. Yes.  
 2 Q. Those discussions were prior to your  
 3 submission of the second Phillips report?  
 4 A. Yes, yes, it was.  
 5 Q. Another non-infringing available  
 6 substitute that you described in your report is  
 7 elimination of the dryer.  
 8 A. Yes.  
 9 Q. Is elimination of the dryer something  
 10 that Rayovac is currently developing?  
 11 A. I don't -- I don't recall. I -- there  
 12 are -- there are two things you can do about  
 13 eliminating a dryer. You can just not have one or  
 14 you can -- and take the penalty of a longer drying  
 15 time. Or you can substitute some different means  
 16 of drying such as induction heat, as Mr. Hoesser  
 17 mentions.  
 18 I understand that Braun has -- currently  
 19 markets both kinds, that is, no dryer at all and an  
 20 induction heating form of dryer in addition to the  
 21 blower one that is in dispute here.  
 22 I think Rayovac is contemplating the  
 23 same things; but where it lies, I don't know.  
 24 Q. And what is your basis of your belief

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1 that Rayovac is contemplating the same things?  
 2 A. I don't think I talked to Mr. Chasen  
 3 about that, but I talked to Mr. Shimota about that.  
 4 Q. Have you seen any documents concerning  
 5 the elimination of the dryer?  
 6 A. No.  
 7 Q. What were your discussions were  
 8 Mr. Shimota about the elimination of the dryer?  
 9 A. Just that they might -- that Rayovac  
 10 might do it. Certainly be easy to do.  
 11 Q. Why is the development of an induction  
 12 heating device to dry -- I'm sorry. Start that  
 13 again.  
 14 Why is the introduction of an induction  
 15 heating device to dry the shaver head easy to do?  
 16 I'm not saying it's not. I just don't know.  
 17 A. The one that I said was easy to do was  
 18 take out the dryer entirely. The induction heater,  
 19 it would take some development. It's by no means  
 20 rocket science. There are plenty of people to help  
 21 you design that.  
 22 Q. But you haven't spoken to anyone at  
 23 Rayovac who would be one of those people?  
 24 A. No, I haven't.

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1 Q. With regard to your non-infringing  
 2 substitute involving the covers.  
 3 A. Yes.  
 4 Q. Which I think are on page -- well,  
 5 paragraph 98 of your report.  
 6 A. Yes.  
 7 Q. Is that something that Rayovac is  
 8 currently considering?  
 9 A. I don't know the extent they are  
 10 considering it. It's -- Rayovac did provide these  
 11 sketches and Rayovac says it would be easy for them  
 12 to do. And having looked at the sketches, I agree  
 13 with them.  
 14 Q. And who at Rayovac provided the  
 15 sketches?  
 16 A. They came to me through Mr. Shimota. I  
 17 don't know where they came from in Rayovac.  
 18 Q. Did you talk to anyone at Rayovac about  
 19 the cover substitute?  
 20 A. I might have talked to Mr. Chasen while  
 21 I had him on the phone, but I don't remember it.  
 22 Not much to talk about.  
 23 Q. With regard to the non-infringing  
 24 available substitute which would require

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1 elimination of the bracket in the Rayovac device.  
 2 A. Yes.  
 3 Q. To whom did you speak to with regard to  
 4 that one?  
 5 A. I don't think I talked to anybody about  
 6 that. It's just that they could do it.  
 7 Q. Why do you say they could do it?  
 8 A. Well, there is so much precedent.  
 9 Cordless telephone comes immediately to mind. The  
 10 only thing the bracket does is -- it does two  
 11 things. It adds stability and it adds electric  
 12 power and both of those you can do with other  
 13 devices that are well-known. I mean, I know of  
 14 them and presumably Rayovac knows of them.  
 15 Q. But you haven't spoken to anyone at  
 16 Rayovac to confirm that?  
 17 A. I don't believe I have.  
 18 Q. And you haven't seen any Rayovac  
 19 documents concerning this?  
 20 A. No, definitely not seen any Rayovac  
 21 documents.  
 22 Q. Have you tested these what you call  
 23 available non-infringing substitutes against any of  
 24 the other claims in the '328 patent, that is, the

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| <p style="text-align: right;">Page 125</p> <p>1 ones that have not been asserted in this case?</p> <p>2 A. I don't think I have. I don't think</p> <p>3 I've paid any attention to the non-asserted ones.</p> <p>4 Q. Can I ask you to look at claim 9 of the</p> <p>5 '328 patent, which is Exhibit 7.</p> <p>6 A. All right.</p> <p>7 Q. As I read them, the only difference</p> <p>8 between claim 9 and claim 11, which is one of the</p> <p>9 asserted claims, is that claim 11 requires a drying</p> <p>10 device and claim 9 requires an electrical</p> <p>11 arrangement for temporarily operating the shaving</p> <p>12 head of the shaving apparatus and the feed device?</p> <p>13 A. Yes.</p> <p>14 Q. Is that your reading as well?</p> <p>15 A. Let me do my own comparison here.</p> <p>16 Q. Sure.</p> <p>17 A. Yes, I think you're reading this</p> <p>18 correct.</p> <p>19 Q. So, with regard to the non-infringing</p> <p>20 substitute which would eliminate the dryer, would</p> <p>21 that non-infringing substitute escape infringement</p> <p>22 of claim 9?</p> <p>23 MR. SHIMOTA: Objection; outside the scope,</p> <p>24 form.</p> | <p style="text-align: right;">Page 127</p> <p>1 A. Oh, assuming that.</p> <p>2 Q. Yes.</p> <p>3 A. If it didn't have the concave structure,</p> <p>4 the need for the outlet port disappears. I mean it</p> <p>5 says that the outlet port allows hair to drain.</p> <p>6 There is nothing to drain from -- I mean, that's</p> <p>7 entirely dependent upon the first element being the</p> <p>8 way it is. The minute you take the concave surface</p> <p>9 away, there is nothing to drain.</p> <p>10 Q. So, you couldn't have a cradle structure</p> <p>11 that wasn't concave that had an outlet port?</p> <p>12 A. I'm having a hard time of thinking what</p> <p>13 it might be.</p> <p>14 Q. So, the outlet port -- the existence of</p> <p>15 an outlet port to one of ordinary skill in the art</p> <p>16 would imply a concave cradle structure?</p> <p>17 A. Yes. Because if it's not concave, then</p> <p>18 it's plane or convex. I don't know what else it</p> <p>19 can be. Or it can be porous and, in any event,</p> <p>20 there is no particular need for a drain because the</p> <p>21 water will just run off.</p> <p>22 Q. Before our lunch break you had testified</p> <p>23 that you had taken apart a shaving head of a</p> <p>24 shaving apparatus during this case and also</p> |
| <p style="text-align: right;">Page 126</p> <p>1 BY THE WITNESS:</p> <p>2 A. Of course, I haven't reached an opinion</p> <p>3 on that. I'd have to study that a bit to see what</p> <p>4 the -- what the result would be.</p> <p>5 BY MS. WENDLANDT:</p> <p>6 Q. Do you know whether the -- any of the</p> <p>7 three Remington or Rayovac products accused of</p> <p>8 infringement in this case have an electrical</p> <p>9 arrangement that operates both the feed device and</p> <p>10 the shaving head?</p> <p>11 MR. SHIMOTA: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. No, I'm sorry, I don't know.</p> <p>14 BY MS. WENDLANDT:</p> <p>15 Q. Okay. Turning your attention back to</p> <p>16 claim 1 of the '328 patent, which is the -- one of</p> <p>17 the elements is a cradle structure with an outlet</p> <p>18 port.</p> <p>19 Isn't the dimension of the outlet port</p> <p>20 something that you would need to know in order to</p> <p>21 answer the question whether the cradle structure is</p> <p>22 able to retain cleaning fluid?</p> <p>23 Again, assuming that claim 1 did not</p> <p>24 have a concave cradle structure.</p>     | <p style="text-align: right;">Page 128</p> <p>1 previously in connection with cleaning --</p> <p>2 A. Yes.</p> <p>3 Q. -- your own shaving apparatus?</p> <p>4 A. Yes.</p> <p>5 Q. And at that time you said that the point</p> <p>6 of the invention here was that you wouldn't have to</p> <p>7 do that, that is, take it apart?</p> <p>8 A. That's my understanding of it. It's</p> <p>9 supposed to be convenient.</p> <p>10 Q. Where in the '328 patent, Exhibit 7, do</p> <p>11 you see that the point of the invention is to add</p> <p>12 this level of convenience to cleaning the shaving</p> <p>13 head?</p> <p>14 A. Would you repeat the question, please.</p> <p>15 Q. Sure.</p> <p>16 MS. WENDLANDT: Can you read back the</p> <p>17 question.</p> <p>18 (WHEREUPON, the record was read</p> <p>19 by the reporter as requested as</p> <p>20 follows: Q. Where in the '328</p> <p>21 patent, Exhibit 7, do you see that</p> <p>22 the point of the invention is to</p> <p>23 add this level of convenience to</p> <p>24 cleaning the shaving head?)</p>  |

32 (Pages 125 to 128)

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1 BY THE WITNESS:

2 A. Whereas I do not find those specific  
3 words, I find several references of storing the  
4 razor and of -- and of avoiding taking it apart.

5 BY MS. WENDLANDT:

6 Q. And what are those references?

7 A. Well, let me go through it again and  
8 find them for you.

9 Q. Sure.

10 A. Column 2, line -- beginning with line 5,  
11 the inference I draw is that you don't want to take  
12 it -- don't want to remove the shaving head.

13 Q. Okay.

14 A. Since it's discussing an advantage over  
15 a prior art.

16 Then there is -- there is -- I'm going  
17 to skip around a little as I remember them.

18 It can be operated -- let's see. In  
19 column 4, at the top, there is some discussion of  
20 operating it while it's in the cleaner, and it has  
21 to be together for you to do that. I have to find  
22 the exact reference for you.

23 I'm jumping back to the first page of  
24 the patent again. Well, he mentions a storage

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1 those are some.

2 Q. Can you describe for me the process by  
3 which your reports were drafted; that is, did you  
4 write the initial draft? Who did that?

5 A. I did write an initial draft and

6 Mr. Shimota rewrote it and we had a number of  
7 meetings in which we would discuss aspects of the  
8 report. So, I've been over the report in  
9 considerable detail several times.

10 Q. Were these meetings in person or  
11 telephonic?

12 A. Typically in person.

13 MS. WENDLANDT: If we could just take a  
14 five-minute break, I may be done.

15 (WHEREUPON, a recess was had  
16 from 1:56 to 2:01 p.m.)

17 BY MS. WENDLANDT:

18 Q. You will recall that prior to the lunch  
19 break we spoke about the disclosure in the Simmons  
20 patent of a cleaning fluid that -- to which one  
21 would add a lubricant?

22 A. Yes, I do recall that.

23 Q. In light of that disclosure, do you  
24 still opine that it would be counterintuitive to

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1 device, column 2, line 22, and it's associated with  
2 arrangement for operating it electrically.

3 So, the cradle is configured as a  
4 cleaning dish, a drying dish and/or a storage  
5 device all together and all of that says to me you  
6 don't want to take it apart.

7 Then around line 40, you ought to  
8 operate it after drainage. I'm sorry. That's  
9 something else. Forget that.

10 At the top of column 3 he mentions more  
11 specifically the benefit of operating it while it's  
12 under water.

13 Q. And from that benefit you infer that you  
14 don't take it apart?

15 A. I do infer that. At the bottom of  
16 column 3, beginning about line 63, he talks again  
17 about storing it, perfect, well protected,  
18 indefinite period of time, locked in place.

19 Again, the inference I draw, until -- he  
20 goes on the next one, "until the cleaning and  
21 drying operations are completed and the shaving  
22 apparatus is needed for a shave." Again, the  
23 inference is that it's together, not disassembled.

24 There may be others, but that is --

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1 one skilled in the art to add the lubricant to the  
2 cleaning fluid in the '328 patent?

3 A. In light of that, no, I don't.

4 MS. WENDLANDT: I have no further questions.

5 MR. SHIMOTA: Okay. I have nothing.

6 Signature is reserved.

7 (Time Noted: 2:02 p.m.)

8 FURTHER DEPONENT SAITH NAUGHT.

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33 (Pages 129 to 132)



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|   |  |
|---|--|
| <p style="text-align: right;">Page 133</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3</p> <p>4 BRAUN GmbH, )</p> <p>5 Plaintiff, )</p> <p>6 -vs- ) Civil Action No.</p> <p>7 RAYOVAC CORPORATION, ) 03-CV-12428-WGY</p> <p>8 Defendant. )</p> <p>9</p> <p>10</p> <p>11 I hereby certify that I have read the</p> <p>12 foregoing transcript of my deposition given at the</p> <p>13 time and place aforesaid, consisting of Pages 1 to</p> <p>14 132, inclusive, and I do again subscribe and make</p> <p>15 oath that the same is a true, correct and complete</p> <p>16 transcript of my deposition so given as aforesaid,</p> <p>17 and includes changes, if any, so made by me.</p> <p>18</p> <p>19 SAMUEL R. PHILLIPS</p> <p>20 SUBSCRIBED AND SWORN TO</p> <p>21 before me this day</p> <p>22 of , A.D. 2005.</p> <p>23 Notary Public</p> <p>24</p>   | <p style="text-align: right;">Page 135</p> <p>1 the outcome of this action.</p> <p>2 IN WITNESS WHEREOF, I do hereunto set my</p> <p>3 hand at Chicago, Illinois, this 1st day of</p> <p>4 September, 2005.</p> <p>5</p> <p>6</p> <p>7</p> <p>8 CORINNE T. MARUT, C.S.R. No. 84-1968</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>  |
| <p style="text-align: right;">Page 134</p> <p>1 STATE OF ILLINOIS )</p> <p>2 ) SS:</p> <p>3 COUNTY OF DU PAGE )</p> <p>4 I, CORINNE T. MARUT, C.S.R. No. 84-1968,</p> <p>5 a Certified Shorthand Reporter of the State of</p> <p>6 Illinois, do hereby certify:</p> <p>7 That previous to the commencement of the</p> <p>8 examination of the witness, the witness was duly</p> <p>9 sworn to testify the whole truth concerning the</p> <p>10 matters herein;</p> <p>11 That the foregoing deposition transcript</p> <p>12 was reported stenographically by me, was thereafter</p> <p>13 reduced to typewriting under my personal direction</p> <p>14 and constitutes a true record of the testimony</p> <p>15 given and the proceedings had;</p> <p>16 That the said deposition was taken</p> <p>17 before me at the time and place specified;</p> <p>18 That the reading and signing by the</p> <p>19 witness of the deposition transcript was agreed</p> <p>20 upon as stated herein;</p> <p>21 That I am not a relative or employee or</p> <p>22 attorney or counsel, nor a relative or employee of</p> <p>23 such attorney or counsel for any of the parties</p> <p>24 hereto, nor interested directly or indirectly in</p> | <p style="text-align: right;">Page 136</p> <p>1 INDEX</p> <p>2 SAMUEL R. PHILLIPS EXAMINATION</p> <p>3 BY MS. WENDLANDT..... 3</p> <p>4 BY MS. WENDLANDT..... 101</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 PHILLIPS DEPOSITION EXHIBIT FIRST REFERRED TO</p> <p>9 Phillips Exhibit 1..... 6</p> <p>10 Phillips Exhibit 2..... 6</p> <p>11 Phillips Exhibit 3..... 6</p> <p>12 Phillips Exhibit 4..... 6</p> <p>13 Phillips Exhibit 5..... 30</p> <p>14 Phillips Exhibit 6..... 78</p> <p>15 Phillips Exhibit 7..... 53</p> <p>16 Phillips Exhibit 8..... 117</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> |

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